

**EXHIBIT
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I, Robert W. Powitz, Ph.D., M.P.H., R.S., D.L.A.A.S. state the following:

1. I am a Forensic Sanitarian and the principal of R.W. Powitz & Associates, PC, a Connecticut Corporation of environmental health and safety professionals. Prior to my assumption of this position in July 1994, I held the positions of Biological Safety Officer with the U.S. Department of Agriculture, Plum Island Animal Research Center, Greenport, NY, from 1992 to 1994, and prior to that, I was Director: Office of Environmental Health and Safety for Wayne State University, Detroit, MI. I began my employment with Wayne State University in 1980. From 1978 to 1980, I was Hospital Epidemiologist for Mercy Hospital in Detroit Michigan and held that title as a part-time position until 1985. I was adjunct faculty at Wayne State University, Ferris State University and St. Clair, where I taught epidemiology, environmental health along with other public health-related courses.
2. I am a 1962 graduate of the State University of New York, Agricultural and Technical College at Cobleskill, NY in Agricultural Production. In 1964, I graduated from the University of Georgia with a Bachelor of Science in Agriculture. My graduate studies were completed at the University of Minnesota, where I was awarded a Master of Public Health degree in 1974, with a major in institutional environmental health and a minor in epidemiology. In 1978, I was awarded a Doctor of Philosophy degree in environmental health, with supporting minors in epidemiology and environmental microbiology. I began my career as a sanitarian in 1968 in the State of New Jersey. I am licensed and registered as a Sanitarian (RS) in the State of Connecticut and with the National Environmental Health Association. Although currently inactive, I held licenses and registrations as a Registered Sanitarian in Michigan, Pennsylvania, Ohio, New York, and New Jersey. I am also registered with the National Environmental Health Association as a Certified Professional – Food safety (CP-FS) and a Registered Food Safety Trainer.
3. I am the author of numerous publications on institutional environmental health, food safety, pest management, inspection technologies, risk, and contamination control. The

West Nile Virus. Other health and safety considerations from rodent infestations include Airborne mouse allergen / Asthma, Lymphocytic Choriomeningitis (LCM), fires from gnawing on electrical systems and wiring, and loss from damage and contamination of personal property.

9. The documents reviewed revealed the following, as well as leaving several critical components of an environmental health investigation and food safety practice undocumented:

- All parties, including the inmates, prison staffs, state inspectors and contractors were aware of the rodent infestation and its serious nature. It was also obvious that the rodent infestation at NMCD was ongoing and of long-standing.
- Institutional leadership knew that the infestation posed a risk to the inmates and staff yet took no action to ameliorate the problem. In addition, the food contractor continued to serve food that was known to be contaminated with rodent feces and possible urine.
- The food service contractor deliberately ignored regulations and provisions of the contract with the Department of Corrections and served knowingly contaminated food.
- The conditions detailed in the documents reviewed pertaining to food, its preparation and service were consistent with Forensic Category I. Vectors in the interpretation of regulatory significance of adulteration from food-contaminating pests in accordance with the FDA Compliance Policy Guide (CPG) Sec 555.600 Filth from Insects, Rodents, and Other Pests in Foods, November 2002. The conditions described were also consistent with sections 3-101.11 and 6-501.111 of the FDA Food Code.
- The complaints and observations of the plaintiffs and others were consistent with environmental health investigation format and the seven logical steps in the epidemiologic approach to study a problem of disease etiology. Each complaint and observation appeared to be independent of one another. They were of different dates, locations, and situations, and all were presented in language unique to each individual complainant and observer. The details of the complaints and observations were corroborated by findings of regulatory and accrediting bodies as well as press reports.
- The most serious risk factors for disease were the reports of food contamination with rodent feces, rodent damage to food in storage, sighting of live rodents in the food

preparation area and the lack of any effective controls to the presence of the rodent pests. It was reported that foods that were found contaminated with rodent feces were served to the inmates and not destroyed in accordance with regulation and acceptable food safety practices. Foods that were contaminated in storage and whose containers showed obvious rodent damage were used and served. Several independent observations stated that this practice was openly permitted by the food service contractor and their agent.

- The reported methods of controlling the rodent infestation at NMCD included using and distributing glue traps that were supplied by the pest control contractor, and home-made measures to preclude entry into the cells and other living areas by the inmates. Since the 1980s, the EPA, New Mexico Department of Agriculture, University of New Mexico, and the pest management industry advocate the use of Integrated Pest Management (IPM) as a common sense, environmentally friendly, safe, and cost-effective approach to controlling pests, particularly in institutional settings. It is consistent with correctional practices and security concerns. There exists ample information through governmental, educational, and industrial sources on IPM and its application.
- The prison leadership clearly ignored the severity of this issue that created these dangerous conditions for their inmate population, in spite of the fact that the State, prison medical staff and the inmates alerted them on numerous occasions of the existing condition.

10. In summary, based upon my review of this case, and with a reasonable degree of environmental and public health certainty, it is my opinion that the rodent infestation at NMCD constitutes a significant health and safety risk to the inmates and staff of the institution. And, that the actions of the food service contractor willingly endangered the inmates and staff of NMCD by neither following acceptable food safety practices nor food safety regulations in protecting the prison population from rodent contamination and potential vector borne diseases. Every institution understands that a pest infestation poses significant risk of disease and injury, and seek correction through acceptable and timely practices such as IPM.